

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAKTHIVEL SUBBIAH,

Defendant-Appellant.

UNPUBLISHED

December 19, 2006

No. 264890

Oakland Circuit Court

LC No. 2005-201225-FH

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of attempting or preparing to arrange for child sexually abusive activity, MCL 750.145c(2), and using the Internet for the purpose of committing the same, MCL 750.145d(1)(a) and (2)(f). He was sentenced to concurrent prison terms of 2-1/2 to 20 years for each conviction. He appeals as of right. We affirm.

Defendant's sole argument on appeal is that the trial court erred in scoring ten points for offense variable (OV) 10 of the sentencing guidelines for exploiting a vulnerable victim. Defendant was assessed ten points for exploiting the victim's youthfulness. MCL 777.40(1)(b). The instructions for this offense variable define the term "exploit" to mean "to manipulate a victim for selfish or unethical purposes" and "vulnerability" to mean "readily apparent susceptibility of a victim to injury, physical restraint, persuasion, or temptation." MCL 777.40(3)(b) and (c).

The court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). "A sentencing court has discretion in determining the number of points to be scored provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A scoring decision "for which there is any evidence in support will be upheld." *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). "Where effectively challenged, a sentencing factor need be proved only by a preponderance of the evidence." *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). This Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

Using the Internet, defendant solicited a person whom he believed to be a 13-year-old girl, but was actually an adult male detective, to meet with him for sex. He first contends that

because the purported child-victim did not actually exist, OV 10 is inapplicable. Because defendant does not address the merits of this contention or cite any authority in support, it is deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). A party cannot simply “announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Defendant next argues that the evidence did not support a finding that he exploited the victim’s youthfulness because the victim’s youthfulness was not atypical of the offense, inasmuch as the crime could not have been committed unless the victim were a child. We disagree. The fact that the victim’s age is an element of the offense does not preclude an assessment of points for OV 10. See, e.g., *People v Johnson*, 474 Mich 96, 103; 712 NW2d 703 (2006); *People v Cotton*, 209 Mich App 82, 84; 530 NW2d 495 (1995). Further, the evidence showed that defendant, a man in his thirties, appealed to a girl’s selfish juvenile interests by offering her beer and pizza to induce her to meet with him. This evidence supported the trial court’s scoring of OV 10. *People v Wilkens*, 267 Mich App 728, 742; 705 NW2d 728 (2005); *People v Harmon*, 248 Mich App 522, 531-532; 640 NW2d 314 (2001).

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly